191—37.25 (514D) Guaranteed issue for eligible persons.

37.25(1) Eligible persons are those individuals described in subrule 37.25(2) who seek to enroll under the policy during the period specified in subrule 37.25(3) and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subrule 37.25(5) that is offered and is available for issuance to new enrollees by issuer, shall not discriminate in the pricing of such Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such Medicare supplement policy.

37.25(2) An eligible person is an individual described in any of the following paragraphs:

a. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement benefits under Medicare and the plan terminates or the plan ceases to provide some or all such supplemental health benefits to the individual;

b. The individual is enrolled with a Medicare Advantage organization under Medicare Advantage under Part C of Medicare and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act and circumstances exist similar to those described below that would permit discontinuance of the individual's enrollment with such a provider if such individual were enrolled in Medicare Advantage:

(1) The certification of the organization or plan under this part has been terminated; or

(2) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; or

(3) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area; or

(4) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

1. The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

2. The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(5) The individual meets such other exceptional conditions as the Secretary may provide;

c. The individual is enrolled with:

(1) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); or

(2) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or

(3) An organization operating under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(4) An organization under Medicare Select policy; and

(5) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph 37.25(2)*"b"*;

d. The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(1) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(2) The issuer of the policy substantially violated a material provision of the policy; or

(3) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

e. The individual was enrolled under a Medicare supplement policy and terminated enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under Medicare Advantage under Part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and the subsequent enrollment under 37.25(2)*"e"* was terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or

f. The individual upon first becoming enrolled for benefits under Part B of Medicare at age 65 or older enrolls in Medicare Advantage under Part C of Medicare or with a PACE provider under Section 1894 of the Social Security Act and disenrolls from the plan or program by no later than 12 months after the effective date of enrollment.

g. The individual enrolls in a Medicare Part D plan during the initial enrollment period, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in paragraph 37.25(5)*"e."*

37.25(3) Guaranteed issue time periods.

a. In the case of an individual described in paragraph 37.25(2)*"a,"* the guaranteed issue period begins on the later of: (1) the date the individual receives a notice of termination or cessation of some or all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or (2) the date that the applicable coverage terminates or ceases; and ends 63 days thereafter.

b. In the case of an individual described in paragraph 37.25(2)*"b," "c," "e"* or *"f"* whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

c. In the case of an individual described in subparagraph 37.25(2)*"d"*(1), the guaranteed issue period begins on the earlier of (1) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any, and (2) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

d. In the case of an individual described in paragraph 37.25(2)*"b,"* subparagraph 37.25(2)*"d"*(2), subparagraph 37.25(2)*"e"*(2), paragraph 37.25(2)*"e"* or paragraph 37.25(2)*"f"* who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date.

e. In the case of an individual described in paragraph 37.25(2)*"g,"* the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; and

f. In the case of an individual described in subrule 37.25(2) but not described in the preceding paragraphs 37.25(3)*"a"* to *"e,"* the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

37.25(4) Extended Medigap access for interrupted trial periods.

a. In the case of an individual described in paragraph 37.25(2)*"e"* (or deemed to be so described pursuant to paragraph 37.25(4)*"a"*) whose enrollment with an organization or provider described in paragraph 37.25(2)*"e"* is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment as described in paragraph 37.25(2)*"e."*

b. In the case of an individual described in paragraph 37.25(2)*"f"* (or deemed to be so described pursuant to paragraph 37.25(4)*"b"*) whose enrollment with a plan or in a program described in paragraph 37.25(2)*"f"* is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment as described in paragraph 37.25(2)*"f."*

c. For purposes of paragraphs 37.25(2)*"e"* and *"f,"* no enrollment of an individual with an organization or provider described in paragraph 37.25(2)*"e,"* or with a plan or in a program described in paragraph 37.25(2)*"f,"* may be deemed to be an initial enrollment under paragraph 37.25(4)*"c"* after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

37.25(5) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

a. Subrule 37.25(2), paragraphs *"a," "b," "c,"* and *"d,"* is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer.

b. Subject to paragraph 37.25(5)*"c,"* paragraph 37.25(2)*"e"* is the same Medicare supplement policy in which the individual was most recently previously enrolled if available from the same issuer, or, if not so available, a policy described in paragraph 37.25(5)*"a."*

c. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this paragraph is:

(1) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(2) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer.

d. Paragraph 37.25(2)*"f"* shall include any Medicare supplement policy offered by any issuer.

e. Paragraph 37.25(2)*"g"* is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

37.25(6) Notification of provisions.

a. At the time of an event described in subrule 37.25(2) because of which an individual loses coverage or benefits due to the termination or change of a contract or agreement, policy, or plan, the organization that terminates or changes the contract or agreement, the issuer terminating or changing the policy, or the administrator of the plan being terminated or changed, respectively, shall notify the individual of the individual's rights under this rule and of the obligations of issuers of Medicare supplement policies under subrule 37.25(1). Such notice shall be communicated contemporaneously with the notification of termination.

b. At the time of an event described in subrule 37.25(2) because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this rule and of the obligations of issuers of Medicare supplement policies under subrule 37.25(1). Such notice shall be communicated within ten working days of the issuer receiving notification of the disenrollment.

[**ARC 7964B**, IAB 7/15/09, effective 8/19/09]